

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BLAZER MATERIALS CORPORATION

and

Case 9-CA-18719

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18, AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 13 September 1982 the General Counsel of the National Labor Relations Board issued a complaint 29 October 1982 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 10 March 1983 the General Counsel filed a Motion for Summary Judgment. On 16 March 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated 23 February 1983, notified the Company that unless an answer was received by close of business 28 February 1983, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, an Ohio corporation, is engaged in the building and construction industry as a contractor and supplier of materials at various locations in Ohio, including a facility at Lancaster, Ohio. During the 12 months preceding the complaint, a representative period, it sold and shipped from its various Ohio facilities goods valued in excess of \$50,000 directly to other enterprises located within the State of Ohio, including Shelly Company and A & S Contracting Co., Inc. (A & S). During the same period, the Company purchased and received at its various Ohio facilities goods valued in excess of \$50,000 from other enterprises located within Ohio that had received the goods directly from points outside Ohio.

Upon the basis of the foregoing facts and the entire record, the Board makes the following:

Conclusions of Law

1. Blazer Materials Corporation, Lancaster, Ohio, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Operating Engineers, Local 18, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All regular hourly paid employees in the Company's Lancaster, Ohio plant constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 1977 the Union has been the exclusive collective-bargaining representative of the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing to make pension contributions the applicable collective-bargaining agreement requires since about 13 March 1982, the Company has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(5) and 8(d) of the Act.

6. By its refusal to bargain described above, the Company has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

(a) Refusing to bargain collectively with International Union of Operating Engineers, Local 18, AFL--CIO, by failing to make the pension contributions required by the applicable collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with International Union of Operating Engineers, Local 18, AFL--CIO.

(b) Make whole its employees by making the pension contributions it should have made pursuant to the collective-bargaining agreement retroactive to 13 March 1982 and by reimbursing unit employees for any expenses ensuing from the Respondent's unlawful failure to make such required payments, in the manner set forth in the section of this Decision entitled "'The Remedy.'"

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its Lancaster, Ohio place of business copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's

² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union of Operating Engineers, Local 18, AFL--CIO, as the exclusive representative of the regular hourly paid employees at our Lancaster, Ohio plant, by failing to make the pension contributions required by the applicable collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with the Union. The appropriate unit for the purpose of collective bargaining is:

All regular hourly paid employees in our Lancaster, Ohio plant.

WE WILL make whole our employees by making the pension contributions we should have made under the collective-bargaining agreement since 13 March 1982 and by reimbursing unit employees, plus interest, for any expenses ensuing from our unlawful failure to make such required payments.

BLAZER MATERIALS CORPORATION

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 3003 Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202, Telephone 513--684--3663.

A & S during the 12 months preceeding the complaint, a representative period, purchased and received at its Piketon, Ohio facility goods valued in excess of \$50,000 directly from points outside Ohio.

We find that the Company and A & S are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At all times material Jack J. Blazer, the Company's president and owner, and Ed Garretson, the Company's secretary, have been supervisors within the meaning of Section 2(11) of the Act or agents of the Company within the meaning of Section 2(13) of the Act.

Since 1977 the Union has been the designated, exclusive collective-bargaining representative of an appropriate bargaining unit composed of all regular hourly paid employees at the Company's plant at Lancaster, Ohio. Since that date the Union has also been recognized as collective-bargaining representative of the Lancaster unit, and its recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from 1 May 1982 to 1 May 1985.

Since about 13 March 1982 the Company has failed to continue in full force and effect all the terms and conditions of the bargaining agreement by failing to make pension contributions the agreement requires. The terms of the agreement the Company has failed to observe cover mandatory subjects of bargaining. By this conduct the Company has failed and refused to bargain in good faith with its employees' representative, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondent, in violation of Section 8(a)(1) and (5) and Section 8(d) of the Act, failed to abide by certain provisions of the applicable collective-bargaining agreement. To remedy this violation, we shall order the Respondent to honor the agreement's provisions and to make its employees whole by making the pension contributions the agreement requires retroactive to 13 March 1982¹ and by reimbursing its employees for any expenses ensuing from the Respondent's unlawful failure to make such required payments as set forth in Kraft Plumbing and Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest as prescribed in Florida Steel Corp., 231 NLRB 651 (1977). See generally Isis Plumbing Co., 138 NLRB 716 (1962).

ORDER

The National Labor Relations Board orders that the Respondent, Blazer Materials Corporation, Lancaster, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the pension fund in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to the provisions in the documents governing the fund at issue, and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See Merryweather Optical Co., 240 NLRB 1213 (1979).

authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

31 January 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD